

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RICHARD BACHMAN and
LYNSEY FULLER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA RICHMOND,

Respondent-Appellant,

and

RICHARD BACHMAN, SR. and CHRISTOPHER
FULLER,

Respondents.

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

MEMORANDUM.

Respondent-mother, Melissa Richmond, appeals as of right from the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (3)(c)(i)-(ii), (3)(g) and (3)(j).¹ We affirm.

I. Background and Procedural History

Over the past several years, Richmond has been investigated by Protective Services on multiple occasions for allegations of physical abuse, improper supervision, medical neglect and sexual abuse of the minor children, Richard (dob: April 25, 1994) and Lynsey (dob: November

¹ The parental rights of respondent-fathers, Richard Bachman, Sr. and Christopher Fuller, were terminated pursuant to MCL 712A.19b(3)(a)(ii). Neither father challenges the trial court's ruling.

15, 1998). Investigations conducted by Eaton County Protective Services, in 2004 and 2005, substantiated allegations of physical abuse of both children. During the involvement and investigation of Richmond by Eaton County Protective Services, the minor children were removed from respondent-mother's home and placed with a relative for a one-year period.

After the return of her children, Richmond began residing with them in Clinton County, where the allegations of abuse continued. The incident giving rise to the current petition occurred in Clinton County in September 2005, when Richard was observed to have bruising on his right inner thigh, above the knee, along with a four-inch mark on the inside of his elbow and forearm. Richard reported that Richmond struck him with a Playstation cord as punishment for assaulting his sister, Lynsey. Although Richmond denied using a cord, she did acknowledge striking him with her hand.

II. Standard of Review

This Court reviews for clear error both a trial court's determination that a ground for termination of parental rights has been established by clear and convincing evidence and the trial court's decision regarding the best interests of the child. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 616 (2003).

III. Analysis

The trial court did not err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary conditions, which led to the adjudication, were Richmond's mental instability and difficulty controlling her anger, resulting in physical and emotional abuse of the minor children.

Contrary to Richmond's assertion, there was sufficient evidence to terminate her parental rights pursuant to MCL 712A.19b(3)(b), which provides, in relevant part:

The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

Numerous instances of inappropriate physical discipline by Richmond, in conjunction with her inability to control her anger, were presented in support of the trial court's ruling pursuant to

MCL 712A.19b(3)(b)(i). Richmond historically demonstrated problems with managing her anger and was incapable of controlling the behavior of the minor children without resorting to physical punishment or emotional manipulation by pitting the children against one another for her attention and approval. Richmond acknowledged striking Richard while driving her vehicle, leading to a minor accident. Richmond refused to accept responsibility for her behavior by asserting that Richard lied regarding the incidents of abuse merely to satisfy his exaggerated need for attention. Richmond lacked the ability to recognize or acknowledge the legitimacy of the fears expressed by the children and discounted completely any concerns the children verbalized, resulting in a high probability that Richmond's inappropriate interactions would continue with an escalating level of risk to the minor children.

Both children have exhibited extremely disturbing behaviors while in foster care, which is consistent with having been victims of physical and emotional abuse. In addition to being burdened with learning disabilities, Lynsey exhibited inappropriate language and physical interactions with males and was diagnosed with posttraumatic stress disorder and adjustment disorder with depressed mood. Lynsey reported that she witnessed Richmond beat Richard. Despite having attained a sufficient age, Lynsey had difficulty in independently completing self-care tasks and demonstrated regressive behaviors, such as smearing of feces.

Richard's behaviors are of more immediate and serious concern and may necessitate future institutional care. Like his sister, Richard evidences cognitive impairments requiring special education services. Richard is described as displaying a wide range of inappropriate behaviors, with a disquieting lack of remorse. Richard is often impulsive, inattentive and engages in temper tantrums. He has demonstrated inappropriate sexual behavior at school and is particularly aggressive and manipulative with Lynsey. Richard has physically harmed family pets in the foster care home, necessitating their euthanasia, indicating only a morbid curiosity to see their reaction to his implementation of torture. Particularly telling is Richard's admission that he has learned to enjoy being the victim of abuse and has found ways to ignore or not experience the pain. Although consistently demonstrating fear, confusion, anger and hypervigilant attention to the environment, these behaviors were observed to escalate following visits with Richmond. Once the children acclimated to a foster care setting, they both expressed feelings of safety and indicated they no longer desired to return to Richmond's care or home for fear of continued abuse.

Sufficient evidence also existed to support the trial court's findings with regard to MCL 712A.19b(3)(b)(ii). As a child, Richmond was physically and sexually abused by her own father. Despite her own experience, Richmond permitted the maternal grandfather access to Richard who, in turn, was sexually abused and forced to participate in sexual activities by this individual. Although, there is no direct or verifiable evidence that Lynsey was sexually abused, therapists and other professionals involved in her care questioned whether she also had been victimized in this manner based on her demonstration of sexually inappropriate behaviors and her own verbal reports, albeit inconsistent, of having experienced inappropriate touching at the hands of Richmond. Further, Richmond acknowledged that she authorized her live-in boyfriend to physically discipline Richard, described by the minor child as being "slammed."

Sufficient evidence also existed for the termination of Richmond's parental rights in accordance with MCL 712A.129b(3)(c), which provides:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Richmond has been afforded multiple opportunities, through her repeated interactions with Protective Services, to have rectified and obtained consistent help for the problems, which led to the adjudication in this matter. This is not the first time the minor children have resided outside of Richmond's home.

Despite having received a psychiatric diagnosis and medication, there was no verification that Richmond followed the prescribed medical regimen. Richmond routinely missed required drug screens, indicating as her excuse only that she was too "tired" following work to go to the clinic. Richmond evidenced continuing denial of the extent and severity of the problems faced by the minor children and a persistent lack of insight into how to deal with their ongoing issues. During the proceedings, Richmond's parenting time was suspended with the minor children because of her inappropriate interactions, which visibly exacerbated the children's distress and fear. Richmond initially failed to attend counseling, but was more compliant when an alternative counselor was procured. Although she completed anger management courses, whether she received any actual benefit was questionable and inconsistently reported by the service provider. Despite ongoing counseling and therapy, Richmond continued to discount the contribution of her own behaviors and responsibility leading to the termination proceedings and, instead, attributed fault to the minor children, suggesting they lied and falsely reported incidents. Particularly telling was Richmond's failure to evict her live-in boyfriend despite reports that the children feared him and instructions that his continued presence, because of his ongoing abuse of alcohol and marijuana along with his criminal history involving the sale of illegal drugs, seriously jeopardized the possibility of reunification. Even with the benefit of such explicit directives, Richmond waited approximately six months before having her boyfriend leave her home and reportedly only evicted him when she discovered his involvement with another woman and not because of expressed concerns pertaining to his illegal behavior and the children's fear.

Sufficient evidence supporting termination of Richmond's parental rights also existed in accordance with MCL 712A.19b(3)(g). The statutory subsection provides for termination when:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Richmond lacked appropriate housing and was financially incapable of supporting the children. Richmond was living in a one-bedroom apartment and did not make any attempt or demonstrate a viable plan to secure larger, more appropriate living arrangements to accommodate the children. Richmond did not maintain steady employment and, despite her limited financial resources, required assistance in managing her money in order to meet routine obligations. Her own cognitive and emotional limitations restricted Richmond's ability to meet the very specialized psychological and educational needs of the minor children. Despite months of counseling, Richmond remained in denial regarding the severity of the problems confronting the minor children and could not articulate their needs.

Finally, the trial court's determination that Richmond's parental rights should be terminated in accordance with MCL 712A.19b(3)(j) was appropriate. Based on the prolonged history and escalation of abuse to which these children were subjected, coupled with the failure of Richmond to demonstrate any meaningful understanding of their needs and the impact of her behavior, the trial court correctly determined that there was "a reasonable likelihood . . . that the child[ren] would be harmed if . . . returned to the home of the parent."

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Brian K. Zahra